

## EDWIN L. WADE

MAY 7, 1942.—Ordered to be printed

Mr. ELLENDER, from the Committee on Claims, submitted the following

## REPORT

[To accompany H. R. 5687]

The Committee on Claims, to whom was referred the bill (H. R. 5687) for the relief of Edwin L. Wade, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 1212, Seventy-seventh Congress, first session, which is appended hereto and made a part of this report.

[H. Rept. No. 1212, 77th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (H. R. 5687) for the relief of Edwin L. Wade, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Line 6, strike out the figures "\$1,559" and insert in lieu thereof the figures "\$484".

At the end of the bill, add: "Provided, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

An identical bill passed the House in the Seventy-sixth Congress and the facts will be found fully set forth in House Report No. 55, Seventy-sixth Congress, first session, which is appended hereto and made a part of this report.

[H. Rept. No. 55, 76th Cong., 1st sess.]

## STATEMENT OF FACTS

As amended, this proposed legislation authorizes payment of \$484 to Edwin L. Wade, of Schenectady, N. Y., in full settlement of all claims against the United States for personal injuries received by him and property damage to his automobile when such automobile was forced from the Middleburg-Schoharie Highway,

near Schoharie, N. Y., on December 3, 1935, by a truck in the service of the Civilian Conservation Corps.

The evidence shows that claimant was driving his Cadillac sedan, operated as an omnibus, following a Civilian Conservation Corps truck on the Middleburg-Schoharie Highway; that it was not dark, but dusk, and the Government truck's lights were burning, but claimant had not yet turned his lights on; that the Government driver slowed down preparatory to making a left-hand turn off the highway into a farm road; that as the driver of the Government truck began to turn, claimant was passing the truck; that the Government truck completed the turn and claimant, to avoid a collision, was forced off the highway, his sedan striking a tree at the side of the road; and that the claimant sustained personal injuries and property damage as a result thereof.

The War Department has submitted a report opposing passage of this bill, finding that claimant was contributorily negligent in causing the accident. The Department alleges that claimant did not have his lights burning, but this point seems immaterial as darkness was not prevailing at the time of the accident. The Department also alleges that claimant failed to sound a warning prior to attempting to pass the truck. Claimant, in contradiction of that allegation, states that he "blew the horn of his automobile while the said truck was on the proper and right side of the road." The evidence is meager to support either the Department's or claimant's allegations on this point, as it appears to be constituted of the statements of the two drivers only. However, claimant states that four persons, including the driver, occupied the cab of the Government truck and because of the conversation in the cab, he believes the Government driver failed to hear the warning.

In claimant's favor is the admitted negligence of the Government driver in failing to give a proper hand signal when executing a left turn, in violation of section 83, paragraph 1, New York State Vehicle and Traffic Law (1934). From our review of the evidence, and the conditions leading up to the accident, it is our opinion that this failure by the Government driver was the proximate cause thereof. The duty is primarily with a driver who attempts to make a left turn to ascertain whether such turn can be made with safety, and to signal prior to turning. The Government driver is alleged to have looked through his rear window for approaching traffic but saw none. This is insufficient precaution, as it is entirely possible for a vehicle to be in the process of passing at such time, when it would not be in the line of vision through a rear window, especially a truck window. Precaution should also be taken by looking from the side window. Furthermore, though it is alleged the truck slowed down and its stop light was burning and this should have put claimant on guard, while that is true it does not permit a driver to make any maneuver he may desire, with impunity. Claimant certainly cannot be put on notice that a left turn will be made. The assumption would reasonably be that the truck was coming to a stop. Claimant has asserted, also, that prior to the accident the Government truck passed him on the highway and its driver therefore had notice that other traffic was likely to be following him. For these reasons we conclude that responsibility for the accident rests with the Government driver and the bill should be passed.

As introduced, the bill provided for \$1,559 in settlement of the claim. The record shows that claimant sustained severe shock, lacerations, and contusions to right eyebrow and bridge of nose, and contusions about the chest, in connection with which expenses of \$25 were incurred. He alleges he has a permanent nose injury, although the medical evidence does not so state. With respect to property damage, his automobile was demolished and salvaged for \$25. Claimant replaced it with a used car which cost him \$225, in addition to which he expended \$6 for repair of his eyeglasses, and \$3 for towing the wrecked car. His claim for loss of time is not substantiated by the evidence, since he was engaged in establishing another business. Our recommendation is for allowance for personal injuries and suffering, \$250, plus \$25 expenses in connection therewith, and \$209 property damage, representing the cost of replacing the car, eyeglass repair, and towing, less \$25 salvage on the wrecked car. This totals \$484 in which amount we suggest passage of the bill.

Appended is the report of the War Department and material statements.

WAR DEPARTMENT,  
Washington, January 26, 1938.

Hon. AMBROSE J. KENNEDY,  
*Chairman, Committee on Claims, House of Representatives.*

DEAR MR. KENNEDY: Careful consideration has been given to the bill H. R. 725, Seventy-fifth Congress, first session, for the relief of Edwin L. Wade, which you transmitted to the War Department under date of January 14, 1938, with request for information and the views of the Department relative thereto.

The purpose of the proposed legislation is to pay to Edward L. Wade, of Schenectady, N. Y., the sum of \$1,559 in full settlement of all claims against the United States for damages sustained as a result of personal injuries received by him and property damage to his automobile when such automobile was struck by a Civilian Conservation Corps truck, on December 3, 1935.

The records of the War Department show that about dusk December 3, 1935, a Civilian Conservation Corps truck, on official business, was proceeding at a speed of approximately 25 miles per hour in a southwesterly direction on the Middleburgh-Schoharie Road, near the Schuyler Schaeffer farm, Middleburgh, N. Y.; that the lights of the truck were lit and in proper working order; that when about 500 yards from the Schuyler Schaeffer farm the Government driver reduced his speed to about 5 miles per hour, drove toward his left side of the road, preparatory to making a left turn into the driveway leading to the said farm; that disinterested witnesses testified that the stop light of the Government vehicle showed red; that before making the turn to the left the Government driver looked through the rear window to observe traffic to the rear but saw none; that he then proceeded to complete the turn; that a Cadillac sedan operated as an omnibus, owned by Messrs. Arnold E. and Edwin L. Wade, 2021 Neil Street, Schenectady, N. Y., and driven by Mr. Edwin L. Wade, had been following the Government vehicle at a speed of approximately 35 miles per hour, without lights; that the claimant testified he sounded his horn as a warning that he was about to pass, but the signal was not heard by the Government driver, his passenger, nor by disinterested witnesses; that the Government driver executed the left turn without a proper hand signal, in violation of section 83, paragraph 1, New York State Vehicle and Traffic Law (1934); that all the evidence indicates that the claimant violated section 81, paragraph 7, New York State Vehicle and Traffic Law (1934) in that he failed to signal his desire to pass the Government vehicle; that the claimant drove to his left to avoid the Government vehicle and struck a tree situated at the side of the road, thereby causing the damages complained of.

As a result of this accident the claimant, Mr. Edwin L. Wade, has stated that he suffered injuries to his face and strained his back. A claim was presented to the War Department by Mr. Edwin L. Wade and Mr. Arnold E. Wade for damage to their Cadillac sedan in the amount of \$233, and in the amount of \$1,326 for personal injuries to Mr. Edwin L. Wade as a result of this accident. With the claim Mr. Wade presented the following bills:

For property damage:	
Replacement of damaged Cadillac car by a used Cadillac car	\$225
Right lens to glasses	6
Towing wrecked car	3
Total property damage	234
For personal injuries:	
Cab to Middleburgh (paid to Arnold E. Wade)	5
Doctor's bill	20
Injuries	1,000
Loss of time	300
Total personal injuries	1,325
Total property damage and personal injuries	1,559

With respect to the item "loss of time," it is of record that during the period claimed the claimant was actively engaged in establishing a grocery business which he opened on March 3, 1936, and that at no time was he confined to bed because of his injuries.

Upon review in the War Department of the report of the board of officers which investigated this accident, it was determined that regardless of the negligence of the Government driver in failing to signal his intention to make a left turn, he did



look for traffic to the rear and did slowly reduce the speed of his vehicle and drive toward his left side of the road preparatory to making said turn; that the position of the Government vehicle and its reduced speed should have placed claimant on guard, and his negligence in failing to have his lights on so as to make his presence in the rear of the Government car known, and in attempting to pass the Government vehicle in this position without sounding his horn, contributed to, if it did not constitute, the sole proximate cause of the accident.

Since all of the above seems to establish contributory negligence on the part of Mr. Wade, the War Department is constrained to recommend that favorable consideration be not given to the proposed legislation.

Sincerely yours,

HARRY H. WOODRING,  
*Secretary of War.*

BILL FOR THE RELIEF OF EDWIN L. WADE, RE H. R. 725

STATE OF NEW YORK,

*County of Schenectady, City of Schenectady, ss:*

Edwin L. Wade, being duly sworn, deposes and says that he resides at 2021 Neil Street, Schenectady, N. Y., and that on December 3, 1935, he was co-owner of a Cadillac sedan bus, together with his son, Arnold E. Wade, for whom he is herein acting as agent and copartner; that he submits this affidavit in support of his claim above numbered to substantiate the charges contained therein, and for the purpose of setting forth evidence that same is meritorious.

That deponent on December 3, 1935, at about 4:30 p. m., of that day, was driving the aforesaid automobile bus toward Middleburg, on the Schoharie-Middleburg Road, and was at a point about halfway between Schoharie and Middleburg, and was operating his automobile in a careful and prudent manner. A short time before reaching this point, your deponent had been passed by a Chevrolet truck in the service of the Civilian Conservation Corps in a very negligent manner, at which time your deponent was forced off the road in order to prevent a collision between said truck and an automobile coming from the opposite direction. Your deponent noticed at this time that there were three passengers and a driver in the cab of the said truck.

Upon reaching the aforesaid point, the said truck, which had been traveling immediately in front of deponent for about a mile, was proceeding at the same rate of speed as your deponent, to wit, about 28 or 30 miles an hour. Whereupon, your deponent proceeded to pass the said truck. Deponent blew the horn of his automobile while the said truck was on the proper and right side of the road and pulled his said automobile into the left lane of traffic. When the front wheels of deponent's automobile were at a point midway of the truck, the driver of said truck, without warning or signal of any kind, swerved suddenly to the left, directly into the path of deponent's automobile, causing deponent to swerve as suddenly and as quickly as the said truck and to go off the road to the left, striking a tree at that point, causing the damage and personal injury to deponent and deponent's automobile.

During this time deponent's automobile was occupied by two passengers, one of whom was quite seriously injured and for whose injuries, deponent was compelled to pay.

Following the aforesaid accident, deponent was taken to the office of Dr. Duncan Best in the town of Middleburg, N. Y., who rendered service to him in the amount of \$20; deponent has a permanent nose injury by reason of this accident.

Deponent's automobile was thereafter appraised by Harry West in the town of Middleburg and was thereafter sold to the Englert's Auto Parts in Schenectady for the sum of \$20 as junk. The value before the aforesaid accident was about \$300.

Immediately following the aforesaid accident, representatives and agents of the United States Government caused deponent's car to be held and appraised for investigation, and they caused certain photographs and appraisals to be taken through the said Harry West's garage. In addition, the aforesaid Dr. Best rendered an exhaustive report to the aforesaid representatives of the personal condition of your deponent. Your deponent requests that the necessity of additional affidavits from Dr. Best and Harry West be waived in this instance because of the exhaustive search of the aforesaid representatives and because of the impracticability thereof due to your deponent's age, which is 67 years.

That during the time of the aforesaid accident weather conditions were perfect, and the road was dry. That your deponent has been operating an automobile for some 20 years, and that this is the first accident in deponent's experience. That immediately after the aforesaid accident and in reply to the questioning of the sheriff of Schoharie County, the driver of the said truck admitted that because of the conversations in the crowded cab he neither heard deponent's horn nor signaled in any way the turn he was about to make.

In view of the foregoing, which I have dictated and read, and to which I swear, I respectfully request that my claim be allowed and paid to compensate me for my damage and injury as set forth in the foregoing affidavit.

EDWIN L. WADE.

STATE OF NEW YORK,

*County of Schenectady, city of Schenectady, ss:*

Edwin L. Wade, being duly sworn, deposes and says that he is the deponent in this action; that he has read the foregoing affidavit and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

EDWIN L. WADE.

Sworn to before me, this 17th day of March 1937.

MAX H. HERSHKOWITZ,  
*Commissioner of Deeds.*

James T. Smylie, CC2-167270, after being duly sworn, deposes and saith that while approaching Middleburg from Schoharie, I began to drive further toward the center of the road with a view toward making a left turn into the driveway of the Schaeffer farm. I began this easing to the middle of the road when about 500 yards from the Schaeffer farm, at which time the truck was proceeding at about 25 miles per hour. When about 100 yards from the driveway, the truck was at about dead center of the road and at a speed of about 10 miles per hour. As the left turn into the driveway required an extremely sharp left turn, I had slowed the truck to almost a dead stop when the actual turn was made. I looked out of the rear window to see the condition of traffic and I saw no approaching motor vehicles. After the turn was made I heard a crash to the left of my position and looking over to that direction I saw that an automobile had crashed head-on into a tree which was about 6 feet from the road. This was the first moment that I noticed any vehicle behind me. I did not hear any horn blown. I jumped off the truck to render any assistance that I could. The road was dry, there was sufficient light and the truck was in good condition. The lights of the truck were on. Upon getting off the truck I was accused of not putting out my hand before turning. At the same time the driver of the other car admitted the fact that he did not blow his horn and that his lights were off.

MIDDLEBURG, N. Y., March 14, 1938.

*To Whom It May Concern:*

This is to certify that I treated Mr. Edwin L. Wade of Schenectady, N. Y., on December 3, 5, and 18, 1935, for injuries sustained in a bus accident on the Schoharie road. The injuries consisted of severe shock, lacerations and contusions to right eyebrow and bridge of nose. Also there were contusions about chest. He has been unable to drive a bus since.

DUNCAN L. BEST, M. D.

MIDDLEBURG, N. Y.

Mr. Edwin L. Wade, Schenectady, N. Y., to professional service, \$20.  
Received payment:

D. L. BEST.

STATE OF NEW YORK,

*County of Schenectady, city of Schenectady, ss:*

Adolph Englert, being duly sworn, deposes and says: That he is a resident of the city of Schenectady, N. Y., with his place of business on Maxon Road in said city, said business being the purchase and sale and wrecking of used cars, and that he knows the value thereof.

That on or about the 5th day of December 1935, deponent appraised and purchased the wrecked Cadillac sedan of one Edwin L. Wade of Schenectady, N. Y.; and that he paid the sum of \$25 therefor; that said automobile was in a badly wrecked condition and impossible of repair or use; and that same had no greater value than the amount paid for same.

That, in the opinion of your deponent, this said automobile, a 1929 Cadillac sedan equipped to be operated as a bus in the transportation of passengers, was on that date, to wit, December 5, 1935, of the approximate value of \$350 if same had been in its previously good condition in its use as a bus.

ADOLPH ENGLERT.

Sworn to before me this 16th day of March 1938.

MAX H. HERSHKOWITZ,  
*Commissioner of Deeds.*

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